

Chapter NR 410

AIR PERMIT, EMISSION AND INSPECTION FEES

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1996, No. 492.

NR 410.01 Applicability; purpose. (1) APPLICABILITY. This chapter applies to all owners or operators of air contaminant sources and to any other person who may be required to pay a fee under s. 285.69, Stats.

(2) PURPOSE. The purpose of this chapter is to establish, pursuant to s. 285.69, Stats., the requirements and the procedures for the payment of application fees and emission fees by persons who are required to obtain construction or operation permits for air contaminant sources, application fees by persons who request a determination of exemption from the requirement to obtain an air pollution control permit and asbestos inspection fees by persons responsible for nonresidential asbestos demolition and renovation projects.

History: Renum. from NR 410.01 and 410.02, Register, September, 1986, No. 369, eff. 10–1–86; am. Register, October, 1991, No. 430, eff. 11–1–91; am. (2), Register, May, 1993, No. 449, eff. 6–1–93; am. (2), Register, February, 1995, No. 470, eff. 3–1–95.

NR 410.02 Definitions. The definitions contained in ch. NR 400 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

(2) “Emissions offset” means the reduction of emissions from existing sources to compensate for the increase in emissions from the construction, reconstruction, replacement or modification and operation of the source which is the subject of the permit application.

(3) “Environmental assessment” has the meaning given in s. NR 150.02 (9).

(4) “Facility” means all stationary sources emitting air contaminants which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control. Emissions resulting from loading, unloading or stockpiling materials to or from vessels or vehicles while at a facility shall be considered as part of the facility’s emissions. Air contaminant sources, other than transportation related activities, shall be considered as part of the same industrial grouping if they are classified under the same 2–digit major group as described in the Standard Industrial Classification Manual, 1987, incorporated by reference in s. NR 484.05 (1).

(5) “MACT” means maximum achievable control technology for hazardous air pollutant emissions as promulgated by the EPA under section 112 (d) of the act (42 USC 7412 (d)) or established by the department under section 112 (g) of the act (42 USC 7412 (g)).

(6) “Minor source” means any direct source which is not a major source as defined in s. NR 407.02 (4).

(7) “Non–part 70 source” has the meaning given in s. NR 407.02 (5).

(8) “Part 70 source” has the meaning given in s. NR 407.02 (6).

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; renum. from NR 410.03, Register, September, 1986, No. 369, eff. 10–1–86; renum. (1), (4) and (5) to be NR 400.02 (5e), (53e) and (53s), am. (3), r. (7), Register, April, 1988, No. 388, eff. 5–1–88; cr. (4), Register, May, 1993, No. 449, eff. 6–1–93; am. (intro.), Register, Feb-

ruary, 1995, No. 470, eff. 3–1–95; cr. (5), r. and recr. (6), Register, June, 1995, No. 474, eff. 7–1–95; am. (4), Register, December, 1995, No. 480, eff. 1–1–96; am. (6), Register, December, 1996, No. 492, eff. 1–1–97; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; CR 10–047: cr. (7), (8) Register December 2010 No. 660, eff. 1–1–11.

NR 410.03 Application and review fees. (1) BASIC DIRECT SOURCE FEES. (a) Each person submitting an application for an individual construction permit for a direct source shall pay the applicable basic fee in this paragraph and shall submit a \$7,500 initial fee with the application. The initial fee shall be subtracted from the final fee required under this section and may not be refunded, except as provided in sub. (4). If the department determines that a permit is not required, the individual permit application shall be treated as an application or request under par. (b), and the appropriate fee under par. (b) shall be charged. In the event that an applicant chooses to apply for coverage under either a general or registration construction permit, the individual permit application shall be treated as an application or request under par. (am) or (as) and the appropriate fee under par. (am) or (as) shall be charged. The basic fees are as follows:

1. \$3,000 if the application is not reviewed under ch. NR 405 or 408, and the application is for a new facility or for an emissions unit to be located at a minor source.

2. \$7,500, for a modification not defined as major in s. NR 405.02 (21) or 408.02 (20), when the application is for an emissions unit to be located at a major source as defined in s. NR 407.02 (4).

3. \$12,000, for a major modification as defined in s. NR 405.02 (21) or 408.02 (20), unless the emissions unit is a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21).

4. \$16,000, for a major stationary source as defined in s. NR 405.02 (22) or a major source as defined in s. NR 408.02 (21).

Note: Subdivision 4, applies to both construction of a new facility and to construction of an emissions unit which itself constitutes a major source and is to be located at an existing facility.

8. \$12,000, per air contaminant regulated under a plant–wide applicability limitation, when establishing a plant–wide applicability limitation under s. NR 406.035 (1).

9. \$6,000 for the increase of a plant–wide applicability limitation under s. NR 405.18 (11) or 408.11 (11).

10. \$6,000 for the distribution of allowable limits upon expiration of a plant–wide applicability limitation under s. NR 406.035 (2).

(ae) Each person requesting a revision of a construction permit shall pay a fee of \$1,500 which shall be submitted with the request, unless the only reason for the revision is to make the source eligible for a registration operation permit.

(am) Each person applying for coverage under a general construction permit issued for a part 70 source under s. NR 406.16 shall pay a fee of \$3,000 which shall be submitted with the application for coverage.

(as) Each person applying for coverage under a registration construction permit issued for a part 70 source under s. NR 406.17 shall pay a fee of \$1,500 which shall be submitted with the application for coverage.

(b) Each person submitting a claim of, or an application for exemption, or otherwise requesting a determination of exemption under ch. NR 406 shall pay the following applicable fee which shall be submitted with the claim, application, or request:

1. \$1,250, for a determination of exemption under s. NR 406.04 (1) (i).

2. \$1,500 for a determination of exemption under s. NR 406.04 (1f) for a modification to a stationary source which is regulated by a plant-wide applicability limitation, except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be \$2,400.

3. \$5,500 for a determination of exemption under s. NR 406.04 (1k), except that if a detailed air quality modeling analysis of the projected air quality impact is completed, the fee shall be \$6,500.

3m. Any person submitting a claim for a construction permit exemption under s. NR 406.04 (1q) shall pay a fee of \$1,250 which shall be submitted with the claim.

4. \$500 for a determination of exemption under s. NR 406.04 not included in subd. 1. to 3m.

(bm) Any person requesting a waiver of construction permit requirements under s. 285.60 (5m), Stats., or s. NR 406.03 (2) shall submit under s. 285.69 (1d), Stats., a \$300 fee with the request. The fee is non-refundable.

(c) The basic fees in par. (a) shall be reduced by \$150 if the permit applicant publishes the class 1 newspaper notice required under s. 285.61 (5) (c), Stats.

(e) When a construction permit application is received for a source where the basic emissions unit, which is not a portable source, is to be installed at one specified facility and, in the same application, a request is also made to issue construction permits to allow installation of the same basic emissions unit at other facilities at different locations and all the facilities for which construction permits are requested are under common ownership or control, the permit applicant shall pay the basic fee specified in par. (a) plus the additional fees in sub. (2). The fee for each additional construction permit at different locations shall be \$1,000 each, plus the fees in sub. (2) except when the action specified in sub. (2) has been completed for one location and a separate action as set forth in sub. (2) is not required for each additional permit at each different location. When an action covered under sub. (2) must be completed for applications at more than one location, the fee in sub. (2) shall be charged for each time the action is completed.

(2) ADDITIONAL DIRECT SOURCE FEES. Each person submitting an application for an individual construction permit for a direct source shall pay all the following additional fees which apply:

(a) \$800 per basic emissions unit if review and analysis of 2 or more basic emissions units is required.

(b) \$2,500, if an analysis of alternatives under s. NR 408.08 (2) is required.

(c) \$5,000, if an emission offset under ch. NR 408 or the determination of a net emissions increase under ch. NR 405 is required.

(d) \$4,500, for each case-by-case determination of maximum achievable control technology (MACT), best available control technology (BACT) or lowest achievable emission rate (LAER). This does not apply to BACT or LAER determinations made under ch. NR 445.

(e) \$1,000, for a minor source or minor modification to a major source whose projected air quality impact requires a detailed air quality modeling analysis.

(f) \$4,500, for any source, other than a minor source or minor modification to a major source, whose projected air quality impact requires a detailed air quality modeling analysis.

(g) \$1,000, if the source is subject to an emission limitation under chs. NR 446 to 469, or if the permit establishes an emission

limit for a hazardous air contaminant listed in Table A, B or C of s. NR 445.07.

(h) If the construction permit requires emission testing, \$2,500 for the first air contaminant tested and \$1,250 for each additional air contaminant tested up to a maximum of \$6,000. If the department later finds that some or all of the tests are not required, the corresponding fees shall be refunded.

(i) \$1,500, if an environmental assessment under ch. NR 150 is required.

(j) \$1,500, if a public hearing is held at the request of the applicant or the applicant's agent.

(k) \$600 for each basic emissions unit at a source which requires an emission limit determination under s. NR 424.03 (2) (c).

(L) \$2,000 for each case-by-case determination of best available control technology (BACT) or lowest achievable emission rate (LAER) required under ch. NR 445. If the department makes a single BACT or LAER determination addressing the control of multiple air contaminants, the source shall be billed for only one BACT or LAER determination under this paragraph.

(m) \$3,500, if specific permit conditions limiting the potential to emit are required to make the source a minor source or to make the modification a minor modification.

(n) \$3,500, for a medical waste incinerator requiring review of a needs and siting analysis under s. 285.63 (10), Stats.

(o) If the applicant requests, in writing, that the permit be issued in a shorter time interval than the time interval allowed under s. 285.61, Stats., and the department is able to comply with the request:

1. \$5,000, for an application not subject to review under ch. NR 405 or 408 if the permit is issued within 50 days of receipt of a complete application.

2. \$7,500, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 60 days of receipt of a complete application.

3. \$4,000, for an application reviewed under ch. NR 405 or 408 if the permit is issued within 61 to 90 days of receipt of a complete application.

(3) INDIRECT SOURCE FEES. (a) Each person who applies for and is issued a construction permit for an indirect source shall pay the following amounts:

1. \$5,750 if the permit application is for an indirect source.

2. An additional \$2,500 if the permit application is for an indirect source which requires an environmental assessment under ch. NR 150.

(b) When the permit applicant requests in writing that the permit be issued in a shorter time interval than the total time interval allowed under s. 285.61, Stats., and the department is able to comply with the request, one of the following additional fees shall apply:

1. \$3,000 for an application for an indirect source if the permit is issued within 60 days of receipt of a complete application.

2. \$1,500 for an application for an indirect source if the permit is issued within 61 to 90 days of receipt of a complete application.

(c) Any person requiring a determination of exemption under s. NR 411.04 (2) (c) shall pay a fee of \$275.

(d) The fee under par. (a) shall be reduced by \$150 if the permit applicant publishes the class 1 newspaper notice required under s. 285.61 (5) (c), Stats.

(e) Any person who applies for a construction permit for an indirect source shall submit \$1,000 with the application. This \$1,000 may not be refunded unless the department determines that a permit is not required. When a fee is required under par. (c), only the amount not required under par. (c) will be refunded.

Note: Chapter NR 411 was repealed as the result of 2011 Wis. Act 121 removing department authority to require permits for indirect sources and to charge fees under this subsection.

(4) **PAYMENT AND REFUNDS.** (a) When the amount due with an application or request is less than the final fee, the department shall bill the applicant for the balance due when a final decision is issued or upon a determination that no further action will be taken on the application. For a determination of no further action, the final fee shall include an amount for work completed under subs. (1) to (2), except that the final fee for a small business, as defined in s. 227.114, Stats., shall only be the initial amount due with the application or request. The balance due shall be paid within 30 days of the date of the billing statement.

(b) The department may refund all of, or a portion of, the fee submitted with an application or request for a direct source, in the following situations and amounts:

1. If, upon review of an individual permit application for a direct source, the department determines that the source is exempt from the need to obtain the permit, the difference between the initial application fee and the appropriate amount in sub. (1) (b).

2. If an applicant for an individual permit for a direct source that is a part 70 source requests that the application be processed as an application for coverage under either a general or registration construction permit, the difference between the initial fee submitted with the individual permit application and the appropriate amount in sub. (1) (am) or (as).

3. If the initial application fee is greater than the final fee, the difference between the application and final fees.

4. If an applicant for an individual permit for a direct source that is a non-part 70 source requests that the application be processed as an application for coverage under either a general or registration construction permit, the full initial fee submitted with the individual permit application.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; renum. from NR 410.04, Register, September, 1986, No. 369, eff. 10–1–86; r. and recr. Register, April, 1988, No. 388, eff. 5–1–88; am. (2) (g), Register, September, 1988, No. 393, eff. 10–1–88; am. (2) (l), Register, April, 1989, No. 400, eff. 5–1–89; corrections in (intro.), (1) (b) (intro.) and 1., (2) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1989; am. (intro.), (1) (b) (intro.) and 1., renum. (1) (b) 2. to be 4., cr. (1) (b) 2. and 3., Register, October, 1991, No. 430, eff. 11–1–91; am. (intro.), (1) (b) (intro.), (d), (e) and (3), r. (1) (a) 2. and (1) (b) 4., Register, May, 1993, No. 449, eff. 6–1–93; am. (intro.), (1) (b) (intro.), r. (1) (b) 1. to 3., Register, February, 1995, No. 470, eff. 3–1–95; am. (intro.), (2) (intro.), (a) to (f), (i), r. and recr. (1) and (2) (h), r. (2) (j), renum. (2) (k) to (m) and (3) to be (2) (j), (k) and (o) and (4) and am. (2) (j), (k) and (o), cr. (2) (l) to (n) and (3), Register, June, 1995, No. 474, eff. 7–1–95; correction in (2) (k) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1995, No. 480, eff. 1–1–96; am. (1) (a) 2., Register, December, 1996, No. 492, eff. 1–1–97; am. (intro.), (1) (a), (b) and (d), (2) and (4), Register, December, 1999, No. 528, eff. 7–1–00; correction in (2) (g) made under s. 13.93 (2m) (b) 7., Stats., Register October 2003 No. 574; CR 02–097: am. (2) (g) Register June 2004 No. 582, eff. 7–1–04; CR 04–107: am. (1) (a) 5., cr. (1) (a) 6. and 7. Register August 2005 No. 596, eff. 9–1–05; CR 06–047: am. (1) (d), cr. (1) (f) Register May 2007 No. 617, eff. 6–1–07; CR 06–079: am. (intro.), cr. (1) (bm) Register May 2007 No. 617, eff. 6–1–07; CR 06–019: am. (intro.), cr. (1) (a) 8. to 10., (b) (intro.) and 2. to 4., renum. (1) (b) to be (1) (b) 1. and am., Register June 2007 No. 618, eff. 7–1–07; CR 07–040: am. (4) Register April 2008 No. 628, eff. 5–1–08; CR 10–047: am. (title), (1) (a) (intro.), 1. to 4., 8. to 10., (b), (e), (2), (4) (title), r. (intro.), (1) (d), renum. (1) (a) 5., 6., 7., (f) and (4) to be (1) (ae), (am), (as), (b) 3m., and (4) (a) and am., cr. (4) (b) Register December 2010 No. 660, eff. 1–1–11; correction in (4) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660.

NR 410.04 Annual emission fee. (1) FEE REQUIRED. Except as provided under sub. (3), any person who owns or operates a facility for which an operation permit is required under s. 285.60, Stats., shall pay an annual emission fee to the department at the rate specified in s. 285.69 (2), Stats.

(2) **AIR CONTAMINANTS SUBJECT TO FEE.** (a) Except as provided under par. (b), the annual emission fee shall be based on the annual actual emissions of the air contaminants listed in Table 1 of s. NR 438.03, as those annual actual emissions are recorded in the annual emission inventory prepared by the department under s. NR 438.03 (5).

(b) The following emissions are exempt from the emission fees required under this section:

1. Emissions from any acid rain phase I affected unit for the years 1995 through 1999.

2. Except as provided under sub. (4), emissions in excess of 5,000 tons per year of any air contaminant from any one facility.

3. Emissions of carbon monoxide and carbon dioxide.

4. Emission reduction credits reported as actual emissions.

5. Emissions of acetone, sec-butanol, tert-butanol, n-butyl acetate, chlorobromomethane, diethyl ketone, ethyl acetate, iso-butyl acetate, methyl acetate, methyl acetylene, octane (all isomers), pentane (all isomers) and vinylidene fluoride.

6. Emissions of di-n-octyl phthalate, octachlorostyrene, pentachlorobenzene, perylene, 1,2,3,4-tetrachlorobenzene, 1,2,4,5-tetrachlorobenzene and tributyl tin.

(c) For the purpose of charging fees, the following groups of air contaminants shall be considered single air contaminants:

1. Particulate matter and PM₁₀.

2. Reduced sulfur compounds, mercaptans, hydrogen sulfide and total reduced sulfur.

3. Air contaminants reported as both a hazardous air contaminant and as either a particulate or volatile organic compound. The air contaminants which are not eligible for this exemption are identified by footnote number 3 in Table 1 of s. NR 438.03.

(3) **FACILITIES EXEMPT FROM ANNUAL EMISSIONS FEES.** The following facilities are exempt from the requirement to pay annual emissions fees under s. 285.69 (2), Stats., and this section:

(a) Any facility whose total annual actual emissions of all air contaminants listed in Table 1 of s. NR 438.03, and annotated with footnote 3, are less than 5 tons.

(b) Indirect sources of air pollution.

(4) **UTILITIES WITH ACID RAIN PHASE I AFFECTED UNITS.** Notwithstanding sub. (2) (b) 2., the department shall charge fees on emissions in excess of 5,000 tons per year of any air contaminant from any facility operated by a utility that owns or operates an acid rain phase I affected unit to the extent necessary to recover the fees that would have been charged to that utility if the exemption under sub. (2) (b) 1. did not exist.

(5) **PAYMENT.** Annual emission fees shall be paid to the department within 30 days of receipt of the bill.

(6) **DISPUTED PAYMENT.** (a) The owner or operator of a facility who disputes its annual emissions fee may request, in writing, that the department review the fee. Such a request shall be filed within 30 days of receipt of the bill. The department shall review and supply to the facility, within 14 calendar days of receipt of the written request, all information used to calculate the annual emissions fee. If the facility continues to dispute the fee, it shall supply to the department, within 14 calendar days after receipt of this information, the reasons it disputes the fee. The facility shall be notified by the department, within 7 calendar days of receipt of this information, whether the fee will be adjusted. If the facility continues to dispute the fee, it may appeal the department's final decision pursuant to s. 285.81, Stats.

(b) The facility shall pay the amount of fee not in dispute within 30 days of receipt of the bill.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; renum. from NR 410.05, Register, September, 1986, No. 369, eff. 10–1–86; r. and recr. Register, April, 1988, No. 388, eff. 5–1–88; r. and recr. Register, May, 1993, No. 449, eff. 6–1–93; am. (3), Register, February, 1995, No. 470, eff. 3–1–95; CR 02–146: am. (2) (b) 2. and (4) Register October 2003 No. 574, eff. 11–1–03; CR 02–097: cr. (2) (b) 5. and 6. Register June 2004 No. 582, eff. 7–1–04.

NR 410.05 Asbestos abatement project permit exemption review and inspection fees. (1) FEES REQUIRED. Any person who submits an asbestos abatement notification under ch. NR 447 shall pay the fees in subs. (2) and (3). The fees shall be submitted with the completed notification required under ch. NR 447 and are non-refundable.

(2) **PERMIT EXEMPTION REVIEW FEE.** Any person requiring a determination of exemption under s. NR 406.04 (1) (n) shall pay one of the following amounts:

(a) \$50 for a determination of exemption if the asbestos renovation or demolition operation involves at least 260 linear feet or at least 160 square feet of regulated asbestos containing material and a combined square and linear footage of less than 1000. The

combination of square and linear footage shall be determined by adding the square footage of asbestos containing material on all areas other than pipes to the linear footage of asbestos containing material on pipes.

(b) \$125 for a determination of exemption if the asbestos renovation or demolition operation involves regulated asbestos containing material with a combined square and linear footage of equal to or greater than 1000. The combination of square and linear footage shall be determined by the method given in par. (a).

(3) INSPECTION FEE. The amount of the asbestos abatement project inspection fee shall be:

(a) \$135 if, in a facility being demolished, the amount of regulated asbestos containing material is less than 260 linear feet on pipes and less than 160 square feet on other facility components.

(b) \$350 if the asbestos renovation or demolition operation involves at least 260 linear feet or at least 160 square feet of regulated asbestos containing material and a combined square and linear footage of less than 1000. The combination of square and linear footage shall be determined by the method given in sub. (2) (a).

(c) \$575 if the asbestos renovation or demolition operation involves regulated asbestos containing material with a combined square and linear footage of equal to or greater than 1000 and less than 5000. The combination of square and linear footage shall be determined by the method given in sub. (2) (a).

(d) \$1200 if the asbestos renovation or demolition operation involves regulated asbestos containing material with a combined square and linear footage of equal to or greater than 5000. The combination of square and linear footage shall be determined by the method given in sub. (2) (a).

(e) \$100 if the property is to be demolished by intentional burning as a community fire safety training project.

(f) An amount equal to and in addition to the inspection fee specified in pars. (a) to (d) to inspect property for a project for which a notice of an asbestos renovation or demolition activity was not provided before the work began.

(4) NOTICE UPDATE FEE. Any person submitting an updated notice, as required by s. NR 447.07 (2), for an asbestos renovation

or demolition activity when the amount of affected asbestos changes by at least 20% shall pay a fee of \$100.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; CR 01–055: am. (3) (c), Register January 2002 No. 553, eff. 2–1–02; CR 04–102: am. (2) (a), (b), (3) (a) to (c), cr. (3) (d) Register June 2005 No. 594, eff. 7–1–05; CR 10–046: am. (3) (a) to (d), cr. (3) (e), (f), (4) Register December 2010 No. 660, eff. 1–1–11.

NR 410.06 Severe ozone nonattainment area major source fee. **(1) FEE REQUIRED.** Except as provided in sub. (3),

any person who owns or operates a stationary source which emits or has the potential to emit 25 tons per year of volatile organic compounds (VOCs) and which is located in Kenosha, Milwaukee, Ozaukee, Racine, Washington or Waukesha county shall pay a fee, computed in accordance with sub. (2), beginning in 2008 and in each calendar year thereafter until the county in which the stationary source is located is redesignated as an attainment area for the 1-hour ozone standard. The fee required under this section shall be paid at the time that the annual emission fee under s. NR 410.04 is paid.

(2) COMPUTATION OF FEE. (a) *Fee amount.* The fee required under sub. (1) shall equal \$5,000, adjusted in accordance with par. (c), per ton of VOCs emitted by the source during the previous calendar year in excess of 80% of the baseline amount, computed under par. (b).

(b) *Baseline amount.* For purposes of this section, the baseline amount shall be computed, in accordance with any guidance which the administrator may provide, as the lower of the amount of actual VOC emissions or the VOC emissions allowed under either a permit or emission limitations applicable to the source, during calendar year 2007.

(c) *Annual adjustment.* The fee amount under par. (a) shall be adjusted annually, beginning in 1990, by the percentage, if any, by which the consumer price index, as defined in section 502(b)(3)(B)(v) of the act (42 USC 7661a (b)(3)(B)(v)), has been adjusted.

(3) EXCEPTION. No person who owns or operates a stationary source is required to pay any fee under sub. (1) with respect to emissions during any year that is treated as an extension year under section 181(a)(5) of the act (42 USC 7511(a)(5)).

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01.